

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN EXCISE TAX ON PSEUDOEPHEDRINE; REQUIRING THAT THE TAX BE PAID BY PSEUDOEPHEDRINE DISTRIBUTORS; REQUIRING THAT THE TAX BE PAID ON EACH UNIT OF PSEUDOEPHEDRINE SOLD BY THE DISTRIBUTOR IN THE STATE; PROVIDING FOR THE ADMINISTRATION OF THE TAX; PROVIDING FOR A PENALTY; REQUIRING THAT THE COLLECTIONS OF THE TAX BE USED TO FUND METHAMPHETAMINE ENFORCEMENT EFFORTS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Distributor" means a person or entity engaged in wholesale distribution of drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

(2) "Pseudoephedrine" means any quantity of pseudoephedrine or ephedrine, including their salts, enantiomers (optical isomers), and salts of enantiomers.

(3) "Unit of pseudoephedrine" means 3 grams of a product containing pseudoephedrine.

**NEW SECTION.** **Section 2. Pseudoephedrine tax -- rate -- return -- vendor allowance.** (1) Each distributor shall pay to the department an excise tax of \$1 for each unit of pseudoephedrine sold by the distributor to a retailer in the state.

(2) A distributor shall file a return with the department at the end of each calendar quarter reporting the number of units of pseudoephedrine sold during the quarter. A distributor may deduct from the number of units of pseudoephedrine sold the number of units that the distributor exported from the state and the number of units that were unsalable and destroyed or returned to the distributor. The return is due within 30 days following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to

1 be collected under this section.

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3 **NEW SECTION. Section 3. Distributor registration.** A person may not distribute pseudoephedrine  
4 in this state unless the person has registered with the department as a pseudoephedrine distributor. The  
5 registration must be made on forms supplied by the department at no charge. The registration must be renewed  
6 annually by a date established by the department.

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8 **NEW SECTION. Section 4. Unlawful sales.** (1) A person may not with the intent to evade the tax  
9 imposed by [section 2] knowingly sell or offer to sell pseudoephedrine that was not sold by a registered  
10 distributor.

11 (2) A violation of this section is a misdemeanor punishable by a fine of not more than \$500 or by  
12 imprisonment for not more than 6 months.

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14 **NEW SECTION. Section 5. Audits -- records -- penalty and interest.** (1) The department may audit  
15 the books and records of any distributor to ensure that the proper amount of tax imposed by [section 2] has been  
16 paid. An audit may be conducted on the premises of the distributor or at any other convenient location.

17 (2) The department may conduct an investigation pursuant to 15-1-301 to ensure proper payment of  
18 the tax imposed by [section 2].

19 (3) A dispute between a distributor and the department is subject to the uniform dispute review  
20 procedure established in 15-1-211.

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22 **NEW SECTION. Section 6. Deficiency assessment -- review -- interest -- penalty.** (1) When the  
23 department determines that the amount of tax due is greater than the amount reported by a return, it shall mail  
24 to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may  
25 seek review of the determination pursuant to 15-1-211.

26 (2) Penalty and interest must be added to the deficiency assessment as provided in 15-1-216.

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28 **NEW SECTION. Section 7. Credit for overpayment -- interest on overpayment.** (1) If the  
29 department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid,  
30 the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer

1 and the balance must be refunded to the taxpayer or its successor through reorganization, merger, or  
2 consolidation or to its shareholders upon dissolution.

3 (2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate  
4 as is charged on the amount of unpaid tax, as provided in 15-1-216, due from the due date of the return or from  
5 the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the  
6 overpayment.

7 (3) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed  
8 more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for  
9 the purpose of verifying the amount of the overpayment.

10 (b) Interest is not allowed:

11 (i) if the overpayment is refunded within 6 months from the date the return is due or from the date the  
12 return is filed, whichever is later; or

13 (ii) if the amount of interest is less than \$1.  
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15 **NEW SECTION. Section 8. Penalty and interest for delinquency -- waiver.** (1) Taxes due under  
16 [sections 1 through 13] become delinquent if not paid within 30 days after the end of each calendar quarter. The  
17 department shall add penalty and interest to the amount of all delinquent taxes as provided in 15-1-216.

18 (2) Penalty and interest, as provided in 15-1-216, may be waived by the department if reasonable cause  
19 for the failure to file the return required by [section 2] is provided to the department.  
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21 **NEW SECTION. Section 9. Estimation of tax upon failure to file return -- notice.** (1) If a distributor  
22 fails, neglects, or refuses to file the return required by [section 2] within the time required or fails to pay the tax  
23 required by [sections 1 through 13] within the period provided for in [section 2], the department shall estimate  
24 the amount of revenue of the distributor that was subject to tax under [sections 1 through 13] during the  
25 preceding quarter.

26 (2) The department shall impose penalties and interest as provided in 15-1-216. The department shall  
27 mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed.  
28 The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement  
29 that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty  
30 pursuant to 15-1-206.

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2       **NEW SECTION. Section 10. Warrant for distraint.** If all or part of the tax imposed by [sections 1  
3 through 13] is not paid when due, the department may issue a warrant for distraint as provided in Title 15,  
4 chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand filed after the department  
5 files the warrant for distraint.

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7       **NEW SECTION. Section 11. Statute of limitations.** (1) Except as otherwise provided in this section,  
8 a deficiency may not be assessed or collected with respect to the calendar quarter for which a return is filed  
9 unless a notice of additional tax proposed to be assessed is mailed within 5 years from the date on which the  
10 return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is  
11 considered filed on the last day. If the taxpayer, before the expiration of the period prescribed for the assessment  
12 of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the  
13 expiration of the period agreed upon.

14       (2) A refund or credit may not be allowed or paid with respect to the calendar quarter for which a return  
15 is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the  
16 overpayment, whichever period expires later, unless before the expiration of the period, the taxpayer files a claim  
17 for refund or the department has determined the existence of the overpayment and has approved the refund or  
18 credit of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend  
19 the time within which the department may propose an additional assessment, the period within which a claim  
20 for refund or credit may be filed or a refund or credit allowed if a claim is not filed is automatically extended.

21       (3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or  
22 an action to collect the tax may be brought at any time. If the return is required and the taxpayer files a fraudulent  
23 return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the  
24 department.

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26       **NEW SECTION. Section 12. Administration -- rules.** The department shall:

27       (1) administer and enforce the provisions of [sections 1 through 13];

28       (2) cause to be prepared and distributed forms and information that may be necessary to administer  
29 the provisions of [sections 1 through 13]; and

30       (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of

1 [sections 1 through 13].

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3 NEW SECTION. **Section 13. Disposition of tax.** After funding administration of the tax and  
4 subtracting any refunds, the collections from the tax imposed in [section 2] must be deposited in the state  
5 general fund to be used for methamphetamine enforcement efforts.

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7 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 13] are intended to be  
8 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

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10 NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 2005.

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12 NEW SECTION. **Section 16. Applicability.** [This act] applies to pseudoephedrine sold by a distributor  
13 to a retailer in this state after June 30, 2005.

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